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SUBJECT: BULGARIAN CONSTITUTIONAL AMENDMENTS: ANOTHER ATTEMPT AT
JUDICIAL REFORM

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11. (SBU) SUMMARY: Bulgaria's latest batch of constitutional amendments, approved February 2, attempt to reform Bulgaria's dysfunctional judicial system by creating an OIG-like entity within the Supreme Judicial Council. Building on earlier core amendments, which were seen as a precondition for EU membership, the

new changes seek to strike a balance between judicial independence and accountability. While some amendments, particularly those providing for fiscal decentralization and abolishing conscription, are non-controversial, critics have zeroed in on changes affecting the judiciary. Opponents predict limited effectiveness and warn that establishment of a judicial inspectorate chosen by parliament could lead to political interference. END SUMMARY.

12. (U) On February 2, the National Assembly adopted a package of amendments with a particular emphasis on reforming the judiciary. This is the fourth change in the country's basic law, and the third in less than four years aimed specifically at increasing the transparency and accountability of the judicial system. The European Commission criticized the last revisions, adopted in March 2006, as injecting ambiguity into magistrates' independence (reftel). The Commission's October 2006 report recommended that Bulgaria address the shortcoming, identifying it as one area that could potentially trigger EU safeguard clauses.

13. (SBU) The new amendments, adopted with broad political support, strive to find a middle ground between judicial independence and accountability. The Parliament confirmed the Supreme Judicial Council (SJC) as the sole governing body over the judiciary, solidifying its independence. At the same time, MPs limited the magistrates' immunity to functional immunity, making it easier for judges, prosecutors, and investigators to be prosecuted for actions outside their official capacity. The parliamentarians' most controversial decision was to establish an 11-member inspectorate within SJC to check and monitor the judiciary's work. The inspectorate's members will be selected and confirmed by two-thirds majority of Parliament to four-year terms and will have authority to investigate all judicial operations except those pertaining to case merit. Many leading judicial figures openly expressed skepticism about the new body's efficacy, highlighting its unclear mandate, its vulnerability to political pressure, and the existence of a similar inspectorate within the Ministry of Justice. Judges confided to us serious doubts the new body will make much of a difference, especially in what they characterized as the hierarchical -- and often corrupt -- system where the leadership "does not want to hear the word transparency." Various EU embassies have warily eyed the judicial amendment, uncertain of its usefulness or practicality.

14. (U) Along with judicial reform, the new constitutional amendments also allow fiscal decentralization, enabling

municipalities to set local taxes and duties within the boundaries of the law; abolish conscription and provide for a fully professional army as of January 1, 2008; give parliament budgetary independence; and eliminate the requirement for a quorum to be present in parliament, except during actual votes.

15. (SBU) COMMENT: While some of the constitutional amendments seem of dubious merit, others unequivocally represent positive developments. Fiscal decentralization has been a goal of USG assistance for many years, with USAID-supported projects actively advocating for more local budgetary autonomy. The limits on magistrates' immunity should, over time, increase judicial accountability and allow the system to rid itself of some of its negligent and corrupt members. The inspectorate, if staffed by dedicated, reform-minded officials, should help speed the administration of justice, lessen internal resistance to change, and limit the corruption that hobbles the system's effectiveness. Implementation of the judicial reform will serve as a de facto litmus test of how well the system self-regulates, but on balance the amendments overall are a step in the right direction. END COMMENT

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